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1954

Mar. 11

His Excellency, Governor Hugh Gregg  
State House

Dear Sir:

You have recently directed our attention to a resolution adopted February 26, 1954 whereby Mr. Elaylock Atherton was appointed a Public Utilities Commissioner to act on the pending Boston & Maine, Portsmouth Branch Railroad case in the absence of Commissioner Wells, and have inquired as to Mr. Atherton's current status in view of the death of Mr. Wells on March 5, 1954.

Please be advised that, in our opinion, the language of R. L. c. 286, s. 18 as amended by Laws 1951, c. 203, s. 10 compels the conclusion that the tenure of a special commissioner appointed thereunder is at an end when the office of the commissioner in whose place he was appointed to act becomes vacant by reason of the death of the regular incumbent. It is therefore our view that Mr. Atherton is now without authority to serve in the capacity specified in the action of February 26, 1954.

May we add that we find no authority under which the Governor and Council may appoint an acting commissioner or commissioner to serve on an interim basis. The only course open to the Governor and Council is that provided in R.L. c. 286, s. 2 in which the Legislature, after setting forth the manner of the appointment of commissioners in the ordinary course, provides that: "[v]acancies shall be filled in like manner for the unexpired term".

We exclude from the present opinion any comment upon the de facto status of Mr. Atherton had he, under the appointment of February 26, 1954 acted upon a given matter after the death of Mr. Wells. We do not understand such to be the fact, nor is your question directed thereto.

Very truly yours,

Warren E. Waters  
Deputy Attorney General

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